

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

KARL D. CHROMY, )  
 ) No. 04-1771-HU  
Plaintiff, )  
 )  
v. )  
 ) FINDINGS AND  
 ) RECOMMENDATION  
JO ANNE BARNHART, )  
Commissioner of Social )  
Security, )  
 )  
Defendant. )  
\_\_\_\_\_)

Karl D. Chromy  
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Pro se

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1 HUBEL, Judge:

2 Plaintiff Karl Chromy has filed a *pro se* complaint against  
3 Social Security Administration. The body of the complaint consists  
4 of the following: "Appeal from ALJ proceedings. Correction of  
5 falsified documentation in a hearings process and assessment of  
6 crimes committed." (doc. # 2). The court granted Mr. Chromy's  
7 application to proceed *in forma pauperis*. (doc. # 5)

8 The Commissioner filed a motion to dismiss for lack of  
9 jurisdiction, on the ground that after the administrative hearing,  
10 the Commissioner had issued a fully favorable decision approving  
11 Mr. Chromy's claims for disability insurance and supplemental  
12 security income (SSI) benefits, and on the ground that Mr. Chromy  
13 failed to exhaust his administrative appeal remedies, so that the  
14 order appealed from was not a final order subject to jurisdiction  
15 in this court. (doc. # 7).

16 According to an affidavit submitted by the Commissioner, Mr.  
17 Chromy filed applications for disability insurance benefits and SSI  
18 on May 18, 2000. See Declaration of Paul D. Gould. The applications  
19 were denied initially and upon reconsideration. Id. Mr. Chromy  
20 filed a timely request for a hearing before an administrative law  
21 judge (ALJ) on April 17, 2001. A hearing was scheduled for December  
22 4, 2001, but was delayed in order to permit Mr. Chromy to find a  
23 representative. Mr. Chromy appointed a representative, Patrick  
24 Mackin, who subsequently withdrew. Mr. Chromy proceeded without  
25 representation.

26 The ALJ determined, without a hearing, that based on documents  
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1 submitted to the Commissioner, Mr. Chromy had been disabled since  
2 September 1999, primarily due to paranoid personality disorder. On  
3 September 19, 2002, the ALJ issued a fully favorable decision. The  
4 Commissioner asserts that Mr. Chromy was notified of the ALJ's  
5 decision, and of his right to appeal the decision administratively  
6 within 60 days if he disagreed with it.

7 Mr. Chromy asserts that he was unaware of the Commissioner's  
8 decision because the notification letter was sent to the office of  
9 the Multnomah County Aging and Disabilities Services,<sup>1</sup> which  
10 returned it to the Social Security Administration; it was not until  
11 November 23, 2003, that Mr. Chromy saw the notification letter.

12 On January 14, 2004, Mr. Chromy filed a request for review by  
13 the Appeals Council. On August 2, 2004, the Appeals Council issued  
14 an order finding that Mr. Chromy had not established good cause for  
15 the late filing, and dismissed the request. On September 8, 2004,  
16 Mr. Chromy submitted another letter to the Appeals Council. The  
17 Appeals Council treated the letter as a second request for review,  
18 and on October 7, 2004, notified Mr. Chromy that it would take no  
19 action on the request. Mr. Chromy filed this action on December 2,  
20 2004. The Commissioner filed a motion to dismiss for lack of  
21 jurisdiction on May 4, 2005.

22 Mr. Chromy requested that the court appoint counsel for him  
23 (doc. # 11). On December 7, 2005, the court notified Mr. Chromy

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25 <sup>1</sup> Mr. Chromy states that he was homeless at the time, and  
26 that he was using the address of the Multnomah County Aging and  
27 Disabilities Office as his address.

1 that it had been unsuccessful in its efforts to obtain volunteer  
2 counsel, denying the request for appointment of counsel, and  
3 ordering him to proceed with his case *pro se*. (doc. # 14). Mr.  
4 Chromy was ordered to respond to defendants' motion to dismiss  
5 within 45 days. Id.

6 Mr. Chromy filed a motion requesting an additional 60-90 days  
7 to respond to the motion to dismiss (doc. # 15), which the court  
8 granted in part, extending the time for a response to March 9,  
9 2006. (doc. # 16). Mr. Chromy then filed a motion to freeze his  
10 Social Security account (doc. # 17), and a motion to suspend the  
11 Commissioner's motion to dismiss pending discovery and an order  
12 from the court to the FBI to investigate plaintiff's grievances  
13 regarding his Social Security claim (doc. # 18). Mr. Chromy filed  
14 a response to the motion to dismiss on March 1, 2006 (doc. # 22).

15 Mr. Chromy acknowledges that he has been receiving Social  
16 Security disability benefit checks for "several years," but he has  
17 refused to endorse the checks, so that his income is zero. Mr.  
18 Chromy states that he has not signed the checks because

19 on the back [of the first check] I read that it says that  
20 by signing this you agree... Well we don't agree on a lot  
21 of issues so I would not sign any of the checks until I  
22 had all the documents ... provided for my inspection and  
approval. I waited for the award and decision letters for  
many months, both didn't show up, instead the checks kept  
coming every month (10/02 to the present).

23 Plaintiff's Affidavit, p. 8.<sup>2</sup>

24 It appears that Mr. Chromy takes exception to the ALJ's  
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27 <sup>2</sup> The document is designated an affidavit, but is not sworn.

1 statement in his decision that John Givi, Ph.D., evaluated Mr.  
2 Chromy and reported that Mr. Chromy "evinced significant  
3 psychological disturbance indicative of either a thought disorder  
4 (psychosis) or a severe personality disorder." See Gould  
5 Declaration, Exhibit 1. Dr. Givi reported that Mr. Chromy "was  
6 agitated and his behavior was unpredictable," and that Mr. Chromy  
7 was "unable to cooperate with the full examination process." Dr.  
8 Givi concluded that the most likely diagnosis, based on Mr.  
9 Chromy's conduct, was a paranoid personality disorder. Id.

10 Mr. Chromy contends that he "disqualified [Dr. Givi] from ever  
11 having an appointment with me." According to a letter sent to  
12 Social Security Administration by Mr. Chromy, when he went to see  
13 Dr. Givi

14 I arrived at his office, we were doing a pre-appointment  
15 interview when it was determined that he wasn't competent  
16 to do the evaluation. I asked Mr. Givi three questions 1)  
17 where did you go to school? He answers. 2) How long have  
18 you been doing this line of work? He answers. 3) Do you  
19 retain an attorney? He states that he does, I inform him  
20 that when you hire an attorney, you make an affirmation  
21 and a declaration to the court of NON COMPUS MENTIS  
22 (Latin for not mentally competent) and that his record  
23 was not admissible in a court of law and that we would  
24 not be doing the evaluation and I left his office.

25 Gould Declaration, Exhibit 2.

26 Mr. Chromy has explained to Social Security Administration  
27 that his refusal to cash the Social Security checks is because,  
28 based on the "way that Mr. Givi sounded and stated matters, it  
sounds like someone at the SSA's ALJ land instructed him to make a  
false diagnosis (could it be Mr. Terrence or Mr. Atkins?)" Mr.  
Chromy accuses the ALJ of dereliction of duty and malfeasance, as

1 well as impersonating a judge, perpetrating a fraud on Mr. Chromy  
2 by accepting Dr. Givi's opinions and thereby allowing false  
3 evidence into the hearing process, and engaging in a conspiracy to  
4 commit fraud with Mr. Mackin, Mr. Chromy's former representative.

#### 5 **Standards**

6 A motion under Rule 12(b)(1) addresses the court's subject  
7 matter jurisdiction. When considering a motion to dismiss pursuant  
8 to Rule 12(b)(1), the court is not restricted to the face of the  
9 pleadings, but may review any evidence, such as affidavits and  
10 testimony, to resolve factual disputes about the existence of  
11 jurisdiction. McCarthy v. United States, 850 F.2d 5587, 560 (9<sup>th</sup>  
12 Cir. 1988). The burden of establishing subject matter jurisdiction  
13 rests upon the party asserting jurisdiction. Kokkonen v. Guardian  
14 Life Ins. Co., 511 U.S. 375, 377 (1994).

#### 15 **Discussion**

16 Federal courts are courts of limited jurisdiction; they have  
17 only the power that is authorized by Article III of the  
18 Constitution and the statutes enacted by Congress pursuant to  
19 Article III. Bender v. Williamsport Area Sch. Dist., 475 U.S. 534,  
20 541 (1986). Thus, the court's power is limited to those subjects  
21 encompassed within a statutory grant of jurisdiction. Insurance  
22 Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694,  
23 701 (1982). See also Healy v. Ratta, 292 U.S. 263, 270  
24 (1934) ("[That] which should actuate federal courts requires that  
25 they scrupulously confine their own jurisdiction to the precise  
26 limits which [a federal] statute has defined."

1 The court's jurisdiction to review decisions by the  
2 Commissioner of Social Security is derived from § 405(g) of the  
3 Social Security statute, which provides:

4 Any individual, after any final decision of the  
5 commissioner of Social Security made after a hearing to  
6 which he was a party, irrespective of the amount in  
7 controversy, may obtain a review of such decision by a  
8 civil action commenced within sixty days after the  
9 mailing to him of notice of such decision or within such  
10 further time as the Commissioner of Social Security may  
11 allow. ... The court shall have the power to enter, upon  
12 the pleadings and transcript of the record, a judgment  
13 affirming, modifying or reversing the decision of the  
14 Commissioner of Social Security, with or without  
15 remanding the cause for rehearing.

16 This provision empowers the court to affirm, modify or reverse  
17 the decision of the Commissioner. But this is not the relief sought  
18 by Mr. Chromy. In his complaint and in his motions, Mr. Chromy asks  
19 the court to correct allegedly falsified documentation, "assess"  
20 crimes allegedly committed, presumably by Dr. Givi or the ALJ,  
21 order the Commissioner to "freeze" his Social Security account, and  
22 order the FBI to investigate Mr. Chromy's grievances against the  
23 ALJ, Dr. Givi, and others. All of these actions are beyond the  
24 scope of the court's jurisdiction under the Social Security Act. If  
25 a court lacks jurisdiction, it is not in a position to act.  
26 Toumajian v. Frailey, 135 F.3d 648 (9th Cir. 1998). I conclude,  
27 therefore, that the court lacks jurisdiction over Mr. Chromy's  
28 claims.

I recommend that the Commissioner's motion to dismiss for lack  
of subject matter jurisdiction (doc. # 7) be GRANTED.

#### **Scheduling Order**

The above Findings and Recommendation will be referred to a  
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1 United States District Judge for review. Objections, if any, are  
2 due April 4, 2006. If no objections are filed, review of the  
3 Findings and Recommendation will go under advisement on that date.  
4 If objections are filed, a response to the objections is due April  
5 18, 2006, and the review of the Findings and Recommendation will go  
6 under advisement on that date.

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8 Dated this 20th day of March, 2006.

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10 /s/ Dennis James Hubel

11 Dennis James Hubel  
12 United States Magistrate Judge  
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